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Lastly, FAR Part 77 **Does Not** Consider the following in Determining if an Obstacle is a Hazard to Air Navigation: (1) when a VFR flyway is used many times for a week or two per year, yet not consistently on a daily basis, (2) the future form of navigating via direct (Free Flight Concept) is not addressed in the consideration (Off-airways flying is being utilized more now than ever and will be the primary way to navigate within the next 10-15 years), (3) FAR Part 137 Operations, (4) VFR Military Training Routes (MTR) (this is significant to GA because these MTRs are wider than depicted, and when navigating in the vicinity of an MTR, less attention is paid to the obstructions on the ground, it is also more significant now than ever due to the shortage of airspace the military has to utilize training procedures.), (5) any operation conducted under a waiver or exemption to the FAR's (pipeline patrol, power line patrol), (6) high Density Training Areas, (7) raising the Approach minimums at an airport served by only that one approach, and (8) raising a Minimum Obstruction Clearance Altitude (MOCA) to height of the Minimum En route Altitude (MEA) is OK if there aren't any plans to lower the MEA to MOCA height.

As it can be seen in these three instances, the elimination of certain state and local powers to analyze, regulate, and enforce aviation obstructions and zoning issues not only when covered by FAR Part 77, but also when not covered by these same regulations, will result in a loss of accountability for public safety and cripple state and local government's ability to zone themselves.

State and local governments define hazards contrary to public interest by finding that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also may in effect reduce the size of the area available for landing, taking off, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public and private investment therein. This understanding is the prevailing idea of zoning; to protect and preserve the health, safety and welfare of the communities in question.

If the FCC NPRM is implemented, many airport sponsors across the country will find themselves dealing with a fait accompli. This will prompt FAA's requirements in obstruction standards to be applied in order to mitigate the impact of the obstruction forced upon them at their own cost. These same standards, lacking enforceability to protect the airspace, are depending on state and local laws to be effective, finds themselves useless other than being used for the purpose of now forcing airports to pay for the safety of the flying public. The safety of the flying public was already addressed initially.

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If serious constructive consideration is to be given to the petitioners request and intention with regards to DTV, it is imperative that these same entities find alternative and cooperative ways to work with both state and local government and agencies instead of forcing upon them another level of federal use of Commerce Power. This is a very serious matter when it is associated with FCC's tendency to overturn FAA determinations of hazards based on appeals and information submitted by construction proponents.

Accelerated implementation of DTV for commercial and business purposes cannot and should not be accomplished at the expense of the safety of the flying public.

The protection of airport approaches from dangerous obstructions is a pressing legal problem. Furthermore, AOPA believes that actual implementation of the requested regulatory changes will undoubtedly and literally create hundreds if not thousands of legal conflicts all across the country. **This will not result in faster implementation of DTV in the United States.**

We thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Phil Boyer", written over a horizontal line.

Phil Boyer
President